

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BELINDA K. PARKER and DEPARTMENT OF THE ARMY,
Fort McCoy, Wis.

*Docket No. 97-1627; Submitted on the Record;
Issued April 27, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's actual wages fairly and reasonably represented her wage-earning capacity.

The Board has duly reviewed the case record and concludes that the Office did not properly determine appellant's wage-earning capacity.

In the present case, the Office has accepted that appellant, a family program coordinator, developed post-traumatic stress disorder as a result of her federal employment duties. Appellant stopped work on April 20, 1995. Following its acceptance of appellant's claim, the Office placed appellant on the daily compensation rolls and instructed her to file Form CA-8 for any disability for employment subsequent to September 16, 1995. On a Form CA-8 covering the period August 21 through October 31, 1996, submitted by appellant on December 31, 1996, appellant indicated that between August 21 and October 29, 1996 she worked approximately 25 hours a week as a first step coordinator for catholic charity. Appellant indicated that she was paid \$12.50 per hour and earned a total of \$3,229.00. By decision dated March 6, 1997, the Office advised appellant that it had determined that her actual earnings as a first step coordinator fairly and reasonably represented her wage-earning capacity.

Once the Office accepts a claim and pays compensation, it has the burden to justify reduction of compensation benefits.¹ Under section 8115(a) of the Federal Employees' Compensation Act, wage-earning capacity is determined by the actual earnings received by an employee if the earnings fairly and reasonably represent her wage-earning capacity.² Generally,

¹ See *Mary Jo Colvert*, 45 ECAB 575 (1994).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(c) (December 1993).

wages actually earned are the best measure of wage-earning capacity.³ The Office's procedures indicate that, after a claimant has returned to work for 60 days, a determination will be made as to whether the actual earnings fairly and reasonably represent the claimant's wage-earning capacity.⁴ However, if the position in which the claimant is working is seasonal, part time, temporary, an odd-lot or make-shift position,⁵ or is not within appellant's medical restrictions,⁶ evidence of such may establish that the position does not fairly and reasonably represent the injured employee's wage-earning capacity.

The Board finds that the Office has not met its burden of proof to establish that appellant's actual earnings did fairly and reasonably represent her wage-earning capacity.

It is an elementary principle of workers' compensation law, which the Board has often reiterated, that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.⁷ The March 6, 1997 decision of the Office purports to adjudicate appellant's wage-earning capacity based on her actual wages. This is in error for several reasons. While appellant reported that she worked as a first step coordinator for approximately 10 weeks, CA-8 forms submitted by appellant also indicate that she stopped working at the position prior to the March 6, 1997 wage-earning capacity rating by the Office and was not actually performing the job when the rating was accomplished.⁸ The Office procedures provide that where a claimant has stopped work prior to a wage-earning capacity rating, the Office must first determine that the work stoppage was not due to the employment-related condition.⁹ In the instant case, there is no indication in the record that the Office made such a determination. In addition, while the Form CA-8 on which appellant reported her employment further indicates that she did not work full time but had worked only 25 hours a week, the Office does not appear to have considered this fact in making its determination that appellant's actual earnings fairly and reasonably represent her wage-earning capacity.¹⁰ Finally, while the Office did provide appellant with a computation worksheet which delineates the method used by the Office in calculating her entitlement to continuing compensation, it is obvious on the face of the decision itself that it is incomplete and does not provide a correct

³ *Floyd A. Gervais*, 40 ECAB 1045 (1989).

⁴ *Supra* note 2.

⁵ *William D. Emory*, 47 ECAB 365 (1996).

⁶ *Jack T. McGahee*, 29 ECAB 79 (1977).

⁷ *Arietta K. Cooper*, 5 ECAB 11 (1952).

⁸ *Jimmie L. Clark*, 42 ECAB 252 (1990); *Daycon C. Houge*, 39 ECAB 1162 (1988).

⁹ Current procedures provide that where a retroactive determination is made with respect to earnings for at least 60 days, if the work stoppage occurred on account of the injury-related condition, a retroactive determination is not appropriate; see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(e) (December 1995).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7(a)(1) (December 1995).

description of the wage-earning capacity findings in sufficient detail so that the claimant will understand the reasoning behind the decision.¹¹ The Office therefore did not meet its burden of proof to establish that appellant's earnings as a first step coordinator fairly and reasonably represented her wage-earning capacity.

The decision of the Office of Workers' Compensation Programs dated March 6, 1997 is hereby reversed.

Dated, Washington, D.C.
April 27, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Patrick Michael Duffy*, 43 ECAB 280 (1991).